

## Internal Revenue Service, Treasury

## § 301.6110-3

the appeal of a taxpayer from the decision of a district director not to seek technical advice, or

(vi) Response to a request for technical advice which the district director declines to adopt, and the district director's request for reconsideration thereof.

(h) *Issuance.* "Issuance" of a written determination occurs, with respect to rulings and determination letters, upon the mailing of the ruling or determination letter to the person to whom it pertains. Issuance of a technical advice memorandum occurs upon the adoption of the technical advice memorandum by the district director.

(i) *Person to whom written determination pertains.* A "person to whom a written determination pertains" is the person by whom a ruling or determination letter is requested, but if requested by an authorized representative, the person on whose behalf the request is made. With respect to a technical advice memorandum, a "person to whom a written determination pertains" is the taxpayer whose return is being examined or whose claim for refund or credit is being considered.

(j) *Person to whom a background file document relates.* A "person to whom a background file document relates" is the person to whom the related written determination pertains, as such term is defined in paragraph (i) of this section.

(k) *Person who has a direct interest in maintaining confidentiality.* A "person who has a direct interest in maintaining the confidentiality of a written determination" is any person whose name and address is listed in the request for such written determination, as required by § 601.201(e)(2) of this chapter. A "person who has a direct interest in maintaining the confidentiality of a background file document" is any person whose name and address is in such background file document, or who has a direct interest in maintaining the confidentiality of the written determination to which such background file document relates.

(l) *Successor in interest.* A "successor in interest" to any person to whom a written determination pertains or background file document relates is any person who acquires the rights and assumes the liabilities of such person

with respect to the transaction which was the subject matter of the written determination, provided that the successor in interest notifies the Commissioner with respect to the succession in interest.

[T.D. 7524, 42 FR 63413, Dec. 16, 1977]

### **§ 301.6110-3 Deletion of certain information in written determinations open to public inspection.**

(a) *Information subject to deletion.* There shall be deleted from the text of any written determination open to public inspection or subject to inspection upon written request and background file document subject to inspection upon written request pursuant to section 6110 the following types of information:

(1) *Identifying details.* (i) The names, addresses, and identifying numbers (including telephone, license, social security, employer identification, credit card, and selective service numbers) of any person, other than the identifying details of a person who makes a third-party communication described in § 301.6110-4(a), and

(ii) Any other information that would permit a person generally knowledgeable with respect to the appropriate community to identify any person. The determination of whether information would permit identification of a particular person will be made in view of information available to the public at the time the written determination or background file document is made open or subject to inspection and in view of information that will subsequently become available, provided the Internal Revenue Service is made aware of such information and the potential that such information may identify any person. The "appropriate community" is that group of persons who would be able to associate a particular person with a category of transactions one of which is described in the written determination or background file document. The appropriate community may vary according to the nature of the transaction which is the subject of the written determination. For example, if a steel company proposes to enter a transaction involving the purchase and installation of blast

furnaces, the “appropriate community” may include all steel producers and blast furnace manufacturers, but if the installation process is a unique process of which everyone in national industry is aware, the “appropriate community” might also include the national industrial community. On the other hand, if the steel company proposes to enter a transaction involving the purchase of land on which to construct a building to house the blast furnaces, the “appropriate community” may also include those residing or doing business within the geographical locale of the land to be purchased.

(2) *Information concerning national defense and foreign policy.* Information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which is in fact properly classified pursuant to such order.

(3) *Information exempted by other statutes and agency rules.* Information specifically exempted from disclosure by any statute other than the Internal Revenue Code of 1954 and 5 U.S.C. 552 which is applicable to the Internal Revenue Service, and any information obtained by the Internal Revenue Service solely and directly from another Federal agency subject to a nondisclosure rule of such agency. Deletion of information shall not be made solely because the same information was submitted to another Federal agency subject to a nondisclosure rule applicable only to such agency.

(4) *Trade secrets and privileged or confidential commercial or financial information—(i) Deletions to be made.* Any—

(A) Trade secrets, and

(B) Commercial or financial information obtained from any person which, despite the fact that identifying details are deleted pursuant to paragraph (a)(1) of this section, nonetheless remains privileged or confidential.

(ii) *Trade secret.* For purposes of paragraph (a)(4)(i)(A) of this section, a trade secret may consist of any formula, pattern, device or compilation of information that is used in one’s business, and that gives one an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound,

a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. The subject of a trade secret must be secret, that is, it must not be of public knowledge or of a general knowledge in the trade or business. Novelty, in the patent law sense, is not required for a trade secret.

(iii) *Privileged or confidential.* For purposes of paragraph (a)(4)(i)(B) of this section, information is privileged or confidential if from examination of the request and supporting documents relating to a written determination, and in consideration of the fact that identifying details are deleted pursuant to paragraph (a)(1) of this section, it is determined that disclosure of such information would cause substantial harm to the competitive position of any person. For example, while determining whether disclosure of certain information would cause substantial harm to X’s competitive position, the Internal Revenue Service becomes aware that his information has previously been disclosed to the public. In this situation, the Internal Revenue Service will not agree with X’s argument that disclosure of the information would cause substantial harm to X’s competitive position. An example of information previously disclosed to the public is financial information contained in the published annual reports of widely held public corporations.

(5) *Information within the ambit of personal privacy.* Information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, despite the fact that identifying details are deleted pursuant to paragraph (a)(1) of this section. Personal privacy information encompasses embarrassing or sensitive information that a reasonable person would not reveal to the public under ordinary circumstances. Matters of personal privacy include, but are not limited to, details not yet public of a pending divorce, medical treatment for physical or mental disease or injury, adoption of a child, the amount of a gift, and political preferences. A clearly unwarranted invasion of personal privacy exists if from analysis of information submitted in support of the request for a written determination it is determined that

the public interest purpose for requiring disclosure is outweighed by the potential harm attributable to such invasion of personal privacy.

(6) *Information concerning agency regulation of financial institutions.* Information contained in or related to reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions concerning examination, operation or condition of a financial institution, disclosure of which would damage the standing of such financial institution.

(7) *Information concerning wells.* Geological or geophysical information and data, including maps, concerning wells.

(b) *Manner of deletions.* Whenever information, which is not to be disclosed pursuant to section 6110(c), is deleted from the text of a written determination or background file document, substitutions therefore shall be made to the extent feasible if necessary for an understanding of the legal analysis developed in such written determination or to make the disclosed text of a background file document comprehensible. Wherever any material is deleted, an indication of such deletion, and of any substitution therefor, shall be made in such manner as the Commissioner deems appropriate.

(c) *Limitations on the making of deletions.* Any portion of a written determination or background file document that has been deleted will be restored to the text thereof—

(1) If pursuant to section 6110(d)(3) or (f)(4)(A) a court orders disclosure of such portion, or

(2) If pursuant, to § 301.6110-5(d)(1) an agreement is reached to disclose information.

[T.D. 7524, 42 FR 63414, Dec. 16, 1977]

#### **§ 301.6110-4 Communications from third parties.**

(a) *General rule.* Except as provided in paragraph (b) of this section a record will be made of any communication, whether written, by telephone, at a meeting, or otherwise, received by the Internal Revenue Service or Office of its Chief Counsel prior to the issuance of written determination from any person other than a person to whom the written determination pertains or the

authorized representative of such person. This rule applies to any communication concerning such written determination, any communication concerning the request for such written determination, or any communication concerning other matters involving such written determination. A notation that such communication has been made shall be placed on such written determination when it is made open to public inspection or available for inspection upon written request pursuant to § 301.6110-5. The notation to be placed on a written determination shall consist of the date on which the communication was received and the category of the person making such communication, for example, Congressional, Department of Commerce, Treasury, trade association, White House, educational institution. Any person may request the Internal Revenue Service to disclose the name of any person about whom a notation has been made pursuant to this paragraph.

(b) *Limitations.* The provisions of paragraph (a) of this section shall not apply to communications received by the Internal Revenue Service from employee of the Internal Revenue Service or Office of its Chief Counsel, from the Chief of Staff of the Joint Committee on Internal Revenue Taxation, from the Department of Justice with respect to any pending civil or criminal case or investigation, or from another government agency in response to a request made by the Internal Revenue Service to such agency for assistance involving the expertise of such agency.

(c) *Action to obtain disclosure of identity of person to whom written determination pertains—*(1) *Creation of remedy.* With respect to any written determination on which a notation has been placed pursuant to paragraph (a) of this section, any person may file a petition in the United States Tax Court or file a complaint in the United States District Court for the District of Columbia for an order requiring that the identity of any person to whom such written determination pertains be disclosed, but such petition or complaint must be filed within 36 months of the date such written determination is made open or subject to inspection.